

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:12-cr-00068

JAMES A. MATHENY,

Defendant.

**MEMORANDUM OPINION AND ORDER**

On March 2, 2012, the United States of America appeared by R. Booth Goodwin, United States Attorney, and Thomas C. Ryan, Assistant United States Attorney, and the Defendant, James A. Matheny, appeared in person and by his counsel, Mark McMillian, for a hearing on the United States Motion for Revocation of Order Releasing Defendant on Bond (Docket 11) filed on March 2, 2012, shortly after Magistrate Judge Mary E. Stanley issued an order releasing Defendant on bond with special conditions.

At the hearing, the Court heard extended argument from counsel concerning the United States motion for revocation of Magistrate Judge Stanley's release order (Docket 13).

As stated more particularly on the record of the hearing, the Court **FINDS** probable cause to believe Defendant committed the offenses charged in the amended complaint (Docket 7), namely, assault on a federal officer in violation of 18 U.S.C. § 111 and brandishing a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c).

The Court further **FINDS** that, in light of the fact that Defendant has been charged with a violation of 18 U.S.C. § 924(c), the rebuttable presumption under 18 U.S.C. § 3142(e) applies. The Court **FINDS** that Defendant failed to present evidence suggesting that this presumption is unwarranted in light of the particular facts of this case and also **FINDS** that the United States satisfied its burden of persuading the Court of the relief it requested in its motion.

More particularly, the Court **FINDS**, upon consideration of the factors set forth in 18 U.S.C. § 3142(g), that, although Defendant's employment history, community ties, and lack of significant criminal history favor release, the nature and circumstances of the offenses charged—that is, brandishing a loaded firearm in relation to an assault on Special Agent Todd Berry with the Federal Bureau of Investigation and the individual assisting Agent Berry in his official duties—are serious crimes of violence, that the weight of the evidence of these crimes is fairly strong, and that, in light of the circumstances of this case, release of Defendant would pose a significant risk of danger to persons in the community. Thus, because Defendant has failed to rebut the presumption, and in light of the foregoing factors, the Court **FINDS** by clear and convincing evidence that no conditions other than detention will reasonably assure the safety of any other person and the community. Accordingly, the Court **GRANTS** the United States' motion for revocation of release on bond and **REVOKES** the release order issued by Magistrate Judge Stanley.

Therefore, this Court **DIRECTS**, pursuant to 18 U.S.C. § 3142(i), that Defendant Matheny be committed to the custody of the Attorney General for confinement in a correction facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant Matheny shall be afforded reasonable opportunity for private consultation with counsel and, upon an order of this Court or on request of an attorney for the

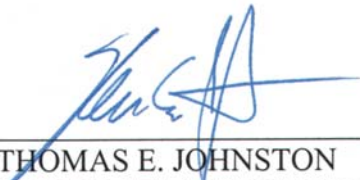
Government, the person in charge of the corrections facility in which Defendant Matheny is confined shall deliver Defendant Matheny to a United States Marshal for the purpose of an appearance in connection with a court proceeding in this matter.

It is further **ORDERED** that Defendant shall receive all properly prescribed medications.

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER:        March 7, 2012



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE